



**US Army Corps
of Engineers**

Omaha District

Public Notice

Program:	In-lieu-fee Mitigation
Waterway:	Waters of the United States in Montana
Issue Date:	December 8, 2003
Expiration Date:	January 7, 2004

REPLY TO:

**Helena Regulatory Office
U.S. Army Corps of Engineers
10 West 15th Street, Suite 2200
Helena, Montana 59626**

30-DAY NOTICE

PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS

The Helena Regulatory Office of the U.S. Army Corps of Engineers (Corps), in conjunction with Montana Fish, Wildlife and Parks (FWP), and the Montana Department of Environmental Quality (DEQ), proposes to develop an in-lieu-fee (ILF) compensatory mitigation option for use in Montana. ILF is a form of third party compensatory mitigation that is described in paragraph four below. By this notice, the Corps is soliciting public comment on this proposal.

The Corps has two regulatory authorities applicable to waters in Montana. Section 404 of the Clean Water Act established a permitting program, administered by the Corps, for discharges of dredge or fill material into waters of the United States. Waters of the United States include interstate waters and their tributaries, including intermittent and ephemeral channels; ponds, lakes and impoundments on those channels; and wetlands adjacent to any of the above waters. Section 10 of the Rivers and Harbors Act of 1899 established a permitting program, administered by the Corps, for the construction of any structure in or over any federally listed navigable water of the United States, the excavation or depositing of materials in such waters, or the accomplishment of any other work affecting the course, location, condition or capacity of such waters. Navigable waters in Montana include the Missouri, Yellowstone and Kootenai rivers.

Under the implementing regulations for Section 404, as well as requirements of the National Environmental Policy Act, the Corps must consider measures to mitigate adverse impacts from projects it permits. Mitigation is typically accomplished through a sequenced priority of avoiding and minimizing impacts, then compensating for unavoidable impacts once impact thresholds are exceeded. In Montana, the Corps requires compensatory wetland mitigation for permitted impacts equal to or greater than 0.10 acre. Options for meeting compensatory mitigation obligations have been limited to applicant conducted/sponsored projects. We propose to establish an ILF mitigation program as another option for permittees in Montana.

Federal guidance for the use of ILF arrangements was published in the November 7, 2000 Federal Register at pages 66914 – 66917. According to this guidance, “(i)n-lieu-fee mitigation occurs in circumstances where a permittee provides funds to an in-lieu-fee sponsor instead of ... completing project specific mitigation ...” Under this option, the permittee provides funds to a third party (ILF sponsor) to assume the mitigation obligation. Upon accumulation of sufficient funds, the ILF sponsor is responsible for completing a project that satisfies the assumed obligations in a given watershed.

The agencies listed in the first paragraph of this notice propose to establish an ILF Agreement with the Montana Wetlands Legacy (Legacy). The Legacy is a voluntary, incentive based partnership comprised of both private and public partners working to protect Montana’s aquatic resources. The Legacy coordinator is a FWP employee. Both the Corps and DEQ will allow use of ILF as an option to satisfy permitting requirements under the Clean Water Act. ILF may also be an option for settling some enforcement actions.

Those parties interested in reviewing the ILF Agreement may access it from the Corps’ Helena Regulatory Office Internet Home Page. Select the “Montana Public Notices” heading at the web address <http://www.nwo.usace.army.mil/html/od-rmt/mthome.htm>. If you would like to receive a hard copy via regular mail, please notify us at:

Phone (406) 441- 1375, or:

U.S. Army Corps of Engineers
10 West 15th Street, Suite 2200
Helena, Montana 59626.

Direct any questions or comments on the ILF proposal to Allan Steinle, State Program Manager, at the above address. Comments may also be faxed to this office at (406) 441-1380.

Any interested party (particularly officials of any town, city, county, state, or Federal agency; Indian tribe; or local association whose interests may be affected by the work) is invited to submit written facts, arguments, or objections on or before the expiration date listed on the front of this notice. Any agency or individual having an objection to the work should specifically identify it as an objection with clear and specific reasons. Comments, both favorable and unfavorable, will be accepted, made a part of the record and will receive full consideration in subsequent actions on this proposal.

Comments postmarked after the expiration date of this public notice or received by Fax after the expiration date of this Public Notice will not be considered.